

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 JEFFREY H. LIEBMAN et al)
5 VS) No. 3:17-cv-0902
6 METHODIST LEBONHEUR)
7 HEALTHCARE et al)

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9
10 BEFORE THE HONORABLE WILLIAM L. CAMPBELL, JR.,

11 DISTRICT JUDGE

12 TRANSCRIPT OF PROCEEDINGS

13 February 3, 2021

14 (Telephone conference)

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2 The above-styled cause came to be heard
3 on February 3, 2021, before the Hon. Williams L.
4 Campbell, Jr., District Judge, when the following
5 proceedings were had by telephone conference at
6 1:33 p.m. to-wit:

7
8 THE COURT: Good afternoon. We're here
9 on a Case 3:17-902, *United States of America, ex rel*
10 *Jeffrey Liebman versus Methodist Le Bonheur*
11 *Healthcare, et al.* for a status conference. If
12 counsel will introduce yourselves for the record,
13 please. We'll start with the plaintiffs. Hello?

14 MR. MARTIN: Your Honor, this is Jerry
15 Martin. I'm sorry, I'd put myself on mute. I
16 apologize. It's Jerry Martin and Seth Hyatt of the
17 Barrett Johnston firm on behalf of the relators. We
18 also is Brian Vroon from Atlanta on behalf of the
19 relators as well.

20 MR. ROARK: Your Honor, this is Brian
21 Roark on behalf of the Methodist defendants. And I'm
22 joined by Taylor Chenery, Taylor Sample and Hannah
23 Webber.

24 MR. THOMAS: Your Honor, this is JD
25 Thomas from Waller Lansden on behalf of the West

1 defendants, West Clinic, PLLC; West Partners, LLC;
2 Erich Mounce and Dr. Lee Schwartzberg. I'm joined by
3 my colleague, Andrew Solinger.

4 THE COURT: Okay. Anybody else?

5 MS. SWEET: Yes, Your Honor. This is
6 Kara Sweet on behalf of the United States of America.

7 MR. CORLEY: And, Your Honor, this is
8 Scott Corley on behalf of the State of Tennessee.

9 THE COURT: All right. I think that's
10 it. Anybody I missed? All right.

11 So we've got currently a trial date in
12 April of 2022. There's a request to extend that by
13 six months, to October of 2022. There's a handful of
14 motions that are pending, one of which deals with the
15 trial date and -- the trial date, and then some
16 discovery issues that I understand Judge Holmes will
17 handle. And we've got a couple of motions to dismiss
18 that are pending.

19 There's also some discussion of
20 settlement. So whoever wants to go first, just kind
21 of give me a 30,000-foot view of where you are and
22 where you want to go.

23 MR. MARTIN: Your Honor, this is Jerry
24 Martin on behalf of the relators. If it's okay with
25 the Court, I'll start.

1 THE COURT: Okay.

2 MR. MARTIN: We filed a joint motion to
3 extend -- I'll start with the trial date motion. I
4 think you've accurately summarized the pending motions
5 that are out there. But we'll start with the joint
6 motion that prompted this status conference. That
7 motion's been filed by the relators and the remaining
8 defendants, what we've referred to as the Methodist
9 defendants.

10 One update. In that motion we explained
11 that the basis for the extension was driven largely by
12 the fact that a settlement had been reached with the
13 West defendants, which includes -- there's multiple
14 defendants that fall into that category. And we were,
15 as we explained in that motion that we filed last
16 week, there is a settlement that had been reached
17 between the relators and the West defendants and we
18 were waiting for government approval to finalize the
19 agreement.

20 We can report that subsequent to filing
21 that motion and the Court setting the status
22 conference, that approval has been granted. And we
23 now have an executed copy of the settlement agreement.
24 And I believe -- and Mr. Thomas can correct me if I'm
25 wrong, but I believe by some point today the West

1 defendants will file a notice withdrawing their motion
2 to dismiss.

3 So that -- that is an update in terms of
4 the relief that we had sought for this status
5 conference, just to tell you those facts have changed
6 slightly, that we now have that agreement.

7 The basis for the request, the joint
8 request between the relators and the remaining
9 Methodist defendants for the six-month extension to
10 the trial date is driven largely because the
11 settlement with the West defendants will sort of
12 reshape how discovery proceeds in the case. I want to
13 say at the outset, you know, we've been diligent in
14 this case. I think the -- you know, evidenced by the
15 fact that we've briefed the motions to dismiss. We've
16 been engaged in significant document discovery. I
17 think hundreds of thousands of documents have been
18 produced in the litigation. And, of course, the
19 relators have reached a settlement with a set of, you
20 know -- one group of the defendants, so we've been
21 diligently pursuing the case.

22 We don't come to the Court asking for the
23 extension of a trial date in any cavalier fashion. In
24 fact, I can't recall ever -- I may have done it, but I
25 don't recall ever moving -- moving to extend a trial

1 date. It's necessary here because it will be very
2 difficult for both the relators and the Methodist
3 defendants, I think, to complete discovery in a timely
4 manner. The settlement is a significant development.
5 We began having settlement negotiations with the West
6 defendants back in the summer. We reached an
7 agreement that we submitted to the government in
8 November and just got that agreement approved in the
9 last few days.

10 The agreement calls for the West
11 defendants to cooperate with the relators in
12 providing, you know, their employees, their members,
13 making them available for interviews, also kind of
14 cutting through discovery objections that they'd made
15 and to request for document production.

16 And so we're at a point now where we're
17 able to sort of benefit from that portion of the
18 settlement agreement where the West defendants have
19 agreed to cooperate with us. That will then, I think,
20 shift the dynamics in terms of what discovery the
21 Methodist defendants -- obviously I'm going to let
22 them speak for themselves, but I think the dynamics
23 have changed significantly.

24 They may find themselves needing to take
25 more depositions than they anticipated, but in the

1 long -- you know, the short version is that the
2 settlement agreement with the West defendants is --
3 you know, has changed sort of the game in terms of
4 what discovery's going to be necessary and what
5 discovery's going to look like.

6 This is a significant case. You know,
7 there's a -- you know, it -- there's a lot of moving
8 parts to it. It's complicated. And so for those
9 reasons, we -- we don't believe we're going to be able
10 to complete discovery by the current deadline, which
11 is, I believe, in May of this year.

12 So that -- that's -- you're correct,
13 there's a motion to dismiss pending from the Methodist
14 defendants because the West defendants are going to
15 withdraw their motion today. And also there is a
16 discovery motion that the Methodist defendants had
17 filed that we're not a party to that -- or we're not a
18 movant. They filed a motion related to a third-party
19 subpoena that they issued.

20 So that -- that's a very -- hopefully
21 that's the answer to your question at the 30,000-foot
22 level, but at the end of the day we just find
23 ourselves unable to meet -- meet all of our discovery
24 deadlines in light of the sort of developments with
25 this case with this settlement agreement.

1 I'm happy to answer any questions you
2 might have about it. But we wanted to bring this -- I
3 think we initially began these conversations with
4 Judge Holmes back at the end of -- back in December.
5 We wanted to bring this to the Court's attention
6 sooner rather than later and not wait until the
7 deadline was upon us and to -- to be able to do this
8 in an orderly fashion and not unnecessarily delay.
9 But I think it's the consensus of both the Methodist
10 defendants and the relators that without the extension
11 we're going to have a hard time getting done what we
12 need to get done in the case.

13 THE COURT: Okay. All right. Mr. Roark,
14 you want to chime in?

15 MR. ROARK: Thank you -- thank you,
16 Your Honor. This is Brian Roark for the Methodist
17 defendants. I agree with Mr. Martin's
18 characterization of the status of the litigation. All
19 parties have been diligent in prosecuting the case up
20 to this point. I guess if this case was still
21 proceeding in its original posture, then the relators
22 would be noticing depositions of Methodist witnesses,
23 they'd be noticing depositions of West witnesses. But
24 given the settlement, the Methodist defendants weren't
25 party to these settlement discussions, we haven't seen

1 the settlement agreement.

2 But based on how it's been described to
3 us by Mr. Martin, as he said, the -- West is settling,
4 but they are agreeing to be interviewed, their
5 witnesses are going to be interviewed by the relator's
6 counsel. They're agreeing to turn over any
7 discovery -- any documents that they haven't already
8 in the case, which has put Methodist in the position
9 of, we're not -- we're not going to be present at
10 those interviews. I mean, the relators have
11 obligations to notify us as set forth in Judge Holmes'
12 order from last week or two weeks ago, to the extent
13 it changes their disclosure obligations.

14 As Mr. Martin said, at the end of the
15 day, it may now mean that Methodist has to take
16 depositions of West employees. And from having
17 discussions about this with Mr. Martin, we want to --
18 we want to try to -- we have been working on -- on a
19 schedule to complete the remaining discovery and have
20 just come to the conclusion that the parties are going
21 to need more time to do that. I think given the scope
22 and the magnitude of this case and what's alleged, we
23 would say that that's appropriate here.

24 I would also echo Mr. Martin saying that
25 once the West defendants have withdrawn their motion

1 to dismiss in the case, the Methodist motion will
2 remain pending. And it is a motion to both dismiss
3 one of the two relators, Dr. Stern, under the first to
4 file bar, that he's not a proper relator in the case
5 in the first place. And then also to dismiss the
6 entirety of the case as well. That the settlement
7 with West obviously doesn't impact those arguments
8 that have been raised by Methodist.

9 THE COURT: All right. I appreciate that
10 update. Anything to add from the West defendants or
11 any counsel for the governmental entities?

12 MR. THOMAS: Yes, Your Honor, this is
13 JD Thomas on behalf of the West defendants. Nothing
14 to add, other than to confirm what Mr. Martin said,
15 which is we do intend to file a notice shortly here
16 withdrawing our motion to dismiss --

17 THE COURT: Okay.

18 MR. THOMAS: -- pursuant to the
19 settlement agreement.

20 THE COURT: All right.

21 MS. SWEET: This is Kara Sweet on behalf
22 of the US. Nothing from us either. That was an
23 accurate summation.

24 THE COURT: Mr. Corley, you want to
25 concur?

1 MR. CORLEY: Yes, Your Honor, I concur.

2 THE COURT: All right. We'll extend the
3 trial date out for the requested duration for all the
4 reasons you articulated. I think it makes sense,
5 especially when a change -- a case of this complexity
6 changes in a way that it sounds like it's changing, I
7 realize that may reshift some discovery that's needed
8 and give y'all plenty of time to do that.

9 I did notice that there's an amendment
10 deadline that hasn't yet passed, and you may not have
11 made the decision yet or you may not be able to say
12 anything about that. As we look ahead under the
13 current schedule, I notice that that's out there. I
14 don't know if -- oftentimes amendments can impact
15 pending motions to dismiss, so I just mention that.

16 We're happy to roll up our sleeves and
17 handle the Methodist motion to dismiss, but at the
18 same time, if there's an amendment to be had, then
19 perhaps we may not need to, depending on the nature of
20 the amendment. Sometimes they don't impact pending
21 motions, but I'm just putting that out there for -- to
22 the extent it matters and gives y'all something to
23 think about.

24 MR. MARTIN: Your Honor -- oh, I'm sorry,
25 I didn't meant to interrupt.

1 THE COURT: Go ahead.

2 MR. MARTIN: This is Jerry Martin. I
3 would like to address that because I -- we have a -- I
4 think it's February 28 deadline -- or February 26, I'm
5 not exactly sure, sometime at the end of the month
6 currently. That has been kind of a moving target.
7 And we've probably spent most of our time in -- with
8 Judge Holmes in recent -- you know, three weeks ago
9 when we had the -- we had a conference with her
10 discussing that deadline. And we are -- the relators
11 are of the position that we want an opportunity to get
12 some -- you know, do some interviews with the West
13 defendants and take advantage of the settlement that
14 we've reached. You know, we reached back in -- back
15 in November prior to that deadline running.

16 We're not -- we have not made a -- you
17 know, it's impossible for us to make a decision as to
18 whether or not we're going to amend. I think there's
19 a -- there's a significant chance that we will amend
20 based on those discussions.

21 And so, you know -- you know, while we're
22 here and talking about it, you know, we just got this
23 agreement finalized. We've -- we're trying to get in
24 touch with Mr. Thomas to start talking about how and
25 when we can start scheduling some interviews and

1 working through that process. Will we be in a
2 position by the end of February? Not totally sure as
3 I sit here. And I want to be totally transparent, but
4 this is something we've been raising -- you know, we
5 started raising this with Judge Holmes back in
6 December while we were waiting for the agreement to be
7 approved.

8 I would just say to the extent you're
9 inquiring as to what's the possibility of an amendment
10 while the motion to dismiss with the Methodist
11 defendant is pending, I would say that it's a distinct
12 possibility, and it's a distinct possibility that we
13 may even conclude that by the end of February. We're
14 not totally in a -- in a position to make that
15 decision as to whether or not to amend.

16 We also recognize that the Court's going
17 to want us to make that decision. If we're going to
18 move to amend, to do that sooner rather than later.
19 So it is probably the -- I would say in -- you know,
20 to describe it, I would say it's probably the only
21 thing in terms of the scheduling that the Methodist
22 defendants and the relators are not quite on the same
23 page about in terms of, you know, whether we're going
24 to amend and how long we should have to do that. But
25 that's -- that is an issue that's out there and -- and

1 I do want to point that out to the Court.

2 THE COURT: I appreciate it. Go ahead,
3 Mr. Roark.

4 MR. ROARK: Yes, thank you, Judge. From
5 Methodist standpoint, the last pleading in the case
6 right now is the second amended complaint. So the
7 relators have already amended the complaint in this
8 case twice. The motion to dismiss filed by the
9 Methodist defendants argues that given that this is a
10 fraud case, the allegations have to be pleaded with
11 specificity under Rule 9(b). And one of our primary
12 arguments for dismissal in the case is that the
13 relators failed to do that. They have not
14 sufficiently alleged violations of the False Claims
15 Act. They haven't supported it with specific facts.

16 If the relators do seek to amend the
17 second amended complaint, we -- we will look at --
18 look at that closely. If it's simply a matter of --
19 of dropping some claims or cleaning up the pleading, I
20 don't know if we'll have a problem with that. But if
21 where we end up is that the relators are going to seek
22 to shore up their deficient pleadings with discovery
23 that they've gotten in the case to date, the Methodist
24 defendants will absolutely oppose that. And we would
25 see that basically turning Rule 9(b) and Rule 12 on

1 its head.

2 In an FCA case if a relator can file a
3 deficient complaint yet then get discovery to try to
4 shore it up, in our view would be, that would
5 basically read Rule 9(b) out of existence in the False
6 Claims Act context. I think we will -- we will wait
7 to see what happens.

8 When the relators filed the second
9 amended complaint, they basically cut our case in half
10 from what had been alleged originally. If that's
11 what -- if that's what happens again, then I doubt
12 we'll oppose it, but if it is to add in new facts that
13 they didn't allege before, we would anticipate that
14 that will be something to -- that we'll litigate and
15 bring before the Court.

16 THE COURT: Okay. Well, sounds like
17 there's some question marks there. I mentioned it
18 because we often see motions to dismiss, perhaps not
19 on a third version of a complaint, but a motion to
20 dismiss that is rendered moot by some amendment. I
21 just noticed that the amendment deadline hadn't
22 passed. That's the only reason I really raised it.

23 Sounds like that's going to be a fight
24 over whether that deadline that's already in existence
25 gets moved. Y'all can bring that to the Court's

1 attention. Probably Judge Holmes will handle that
2 because she's been handling all these other scheduling
3 issues. But I don't -- I don't have a strong feeling
4 one way or other on that issue. I just mention it
5 because I saw that as a pending deadline.

6 All right. We got the motion on the
7 trial date handled. One of our motions to dismiss is
8 likely to go away and Judge Holmes is going to handle
9 the discovery motion. Is there anything else that we
10 need to deal with today?

11 MR. MARTIN: Not from the relators'
12 perspective, Your Honor. Just real briefly. I don't
13 know that we're going to amend the complaint. We
14 certainly are not feeling the need to amend because we
15 think that our complaint's in any way deficient. If
16 we were going to amend with discovery, we could have
17 already done that. That's not our -- just to be
18 clear, we're not looking to amend because we believe
19 that there's any deficiencies.

20 And, yes, the operative complaint is the
21 second amended complaint, but that's really been the
22 only operative complaint since the case has been out
23 from under seal. The second amended complaint was
24 filed -- it's the only -- only complaint that's been
25 litigated. The complaint was amended while the

1 government was investigating -- the first amendment
2 was filed while the government was investigating.

3 And so it's just to give you a clear
4 picture, there haven't been multiple amendments since
5 this case came out from under seal and it's been in
6 active litigation.

7 THE COURT: Okay. Well, all right. With
8 that clarification, anything else we can deal with
9 today from the plaintiff or from the relators?

10 MR. MARTIN: I don't believe so,
11 Your Honor.

12 THE COURT: All right. From Mr. Roark
13 and your group?

14 MR. ROARK: No, Your Honor.

15 THE COURT: And from Mr. Thomas?

16 MR. THOMAS: No, Your Honor.

17 THE COURT: All right. Well, everybody
18 have a good rest of the afternoon.

19 (Which were all of the proceedings had in
20 the above-captioned cause on the above-captioned
21 date.)
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REPORTER'S CERTIFICATE PAGE

I, Roxann Harkins, Official Court Reporter
for the United States District Court for the Middle
District of Tennessee, in Nashville, do hereby
certify:

That I reported on the stenotype shorthand
machine the proceedings held via teleconference on
February 3, 2021, in the matter of JEFFREY H. LIEBMAN
et al v. METHODIST LEBONHEUR HEALTHCARE et al, Case
No. 3:17-cv-0902; that said proceedings were reduced
to typewritten form by me; and that the foregoing
transcript is a true and accurate transcript of said
proceedings.

This is the 19th day of February, 2021.

s/ Roxann Harkins_____
ROXANN HARKINS, RPR, CRR
Official Court Reporter